

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DISCOVER BANK,)	
Plaintiff,)	
)	
v.)	C.A. No. CPU4-09-001994
)	
MARGARET M. RIVERA,)	
PABLO J. RIVERA,)	
Defendants.)	

DECISION AFTER TRIAL

Plaintiff Discover Bank and Defendant Margaret Rivera (“Defendant”) were present for trial on October 18, 2011. Plaintiff was represented by counsel. Defendant was self-represented. Co-Defendant Pablo Rivera was not present at trial. Plaintiff obtained a Default Judgment against Co-Defendant on May 29, 2009.

Ivy Spence testified on behalf of Plaintiff, and Plaintiff presented documentary evidence (Plaintiff’s Exhibits A, B and C). Gerald S. Booth testified on behalf of Defendant, and Defendant presented documentary evidence (Defendant’s Exhibits A and B).

In a breach of contract action, Plaintiff must prove each of three elements by a preponderance of the evidence.¹ A preponderance of the evidence exists when the body of evidence supporting a conclusion is greater

¹ *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. 2005); *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

than the body of evidence that does not support that conclusion.² First, Plaintiff must show that a contract existed. Second, Plaintiff must establish that Defendant breached an obligation imposed by the contract. Finally, Plaintiff must prove damages suffered as a result of Defendant's alleged breach.

The Court finds that Plaintiff established Defendant's liability for debt incurred through December 2006. Plaintiff presented payments made by Defendant on the account, with a final payment of \$109.08 by Defendant in December 2006. Defendant's final payment brought the account to a zero balance. Plaintiff did not present any account statements for the year 2007. Plaintiff claimed that the account was dormant from December 2006, when the account balance was zero, until December 2007, when the account balance was \$3,540.30.

Defendant claims that she should not be held responsible for charges after she brought the account balance to zero. Plaintiff claims that Defendant was jointly and severally responsible for debt incurred on the credit card after December 2006. The Court finds that Plaintiff failed to prove by a preponderance of the evidence that Defendant is responsible for charges made on the credit card after Defendant paid the balance in full in

² *Reynolds*, 237 A.2d at 711.

December 2006. In short, there is no record evidence linking Defendant to the account after the account was paid in full on December 6, 2006 or otherwise establishing any liability on the part of Defendant once she satisfied the account in full.

In support of its position that Defendant was responsible for charges on the card after December 2006, Plaintiff presented terms and conditions for the credit card which were issued by Discover in 2008. (Plaintiff's Exhibit A.) Specifically, Plaintiff relies upon Exhibit A to establish that Defendant was obligated to take certain action to notify Discover Bank that she was no longer responsible for debt incurred on this account. However, the document is dated 2008. The Court finds that this 2008 document is inadequate to establish what terms and conditions were in place in December 2006. This document does not establish the rights and obligation of the parties prior to its issuance in 2008. Therefore, this document does not provide evidence of Defendant's contractual obligations after Defendant paid off the debt in full in December 2006.

In support of its position that Defendant was responsible for charges on the card after December 2006, Plaintiff also relies upon payments made on the credit card account from 2008 through 2010. However, the only record evidence presented is consistent with Defendant's position that Co-

Defendant was solely responsible for the credit card debt at this time. The payments for 2008 are from Co-Defendant Pablo Rivera by check which include only his name and which are signed by Co-Defendant. This contrasts with the checks used to make payments in 2006 which were written on a joint checking account and signed by Defendant. Therefore, the record evidence of payments made after December 2006 do not establish Defendant's liability for the debts incurred after December 2006.

As further evidence of Defendant's liability for charges on the card after December 2006, Plaintiff refers to the billing statements in Plaintiff's Exhibit C which include the names of both Defendant and Co-Defendant. However, Plaintiff's witness Ivy Spence testified that the fields for the names and address had been re-populated when the documents were printed for litigation. In other words, the statements do not establish that Defendant authorized charges made during that time, or that Defendant even had an active account after December 6, 2006. Therefore, the Court finds the billing statements after December 2006 are not adequate evidence to establish that Defendant was jointly responsible for the account after December 2006.

Therefore, the Court finds that Plaintiff did not establish by a preponderance of the evidence that Defendant was liable to Plaintiff after

Defendant paid the full amount owed under the agreement with a check dated December 6, 2006 made payable to Discover Bank. There was no reliable evidence presented which demonstrated that Defendant was responsible for credit card obligations thereafter. Plaintiff did not establish by a preponderance of the evidence that Defendant was jointly and severally liable for charges incurred on the credit card at issue after Defendant paid the account balance in full in December 2006.

NOW, THEREFORE, this 25th day of October, 2011, based on the findings made on the record and the findings made herein, IT IS HEREBY ORDERED JUDGMENT IS HERBY ENTERED IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFF.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli